

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2566 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
HARISH P VIKAMSHI

Versus

STATE OF GUJARAT  
-----

Appearance:

MR DA BAMBHANIA for Petitioner

MR L.R.PUJARI, AGP for Respondent No. 1, 2  
-----

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 25/02/2000

ORAL JUDGEMENT

In this petition, communications dated May 14, 1987 and May 16, 1987 by the Collector, Kutch at Bhuj, respondent No.2, have been challenged.

It was the case of the petitioner that he was running a poultry farm as small scale industry known as "Kanjari Poultry Farm" situated at Patwari gate, Bhuj in pursuance of grant of land by the Collector, Bhuj on the terms and conditions as mentioned in the Collector's order dated October 24, 1979. It was alleged by the authorities that the petitioner had committed breach of terms and conditions and accordingly, grant was cancelled. Said order was challenged in the present petition. Initially, notice was issued and ad-interim relief was granted. Thereafter, affidavit in reply was filed on behalf of respondent No.2 and after hearing the parties, ad-interim relief was continued and Rule was issued. That was on September 7, 1987. Since more than a decade, said interim relief is continued.

Several contentions were raised by Mr. Bambhanja for the petitioner. It is, however, not necessary for me to enter into larger questions. It was stated that the petitioner was educated unemployed and he was granted land for the purpose of running a poultry farm. It was his case that since the said business could not be successful and he was unable to earn his livelihood, he had made an application for change of user. Said application was, however, not considered in its proper perspective by respondent No.2 and the impugned order was passed which was illegal and contrary to law. He also stated that once the land was granted for non-agricultural purpose, if it is used for other non-agricultural purpose, respondent No.2 had no right, authority or jurisdiction to cancel the said grant. Hence, the action of cancellation of grant was illegal and contrary to law.

On the other hand, Mr. Pujari for the respondents submitted that the land was granted for dairy business because he was educated unemployed. It was granted for a specific purpose to run poultry farm and as he was not running poultry farm, the authorities had to cancel the grant. In the affidavit also, it was stated that an application was made by the petitioner to permit him to show video films by constructing appropriate building and the said application was rejected by the authorities. Thereafter, it was not open to the petitioner to continue a business other than poultry farm. He, therefore, submitted that the petition deserves to be dismissed.

In the facts and circumstances of the case, in my opinion, when ad-interim relief was granted at the initial stage and after filing the affidavit by respondent No.2

and after hearing both the parties, Rule was issued and ad-interim relief was ordered to continue and more than ten years have passed, it would not be in the interest of justice to issue appropriate directions while disposing the petition.

It is open to the petitioner to make fresh application for change of user, although it is stated that he had made such application for change of user. It would be for the appropriate authorities to consider the said application when the petitioner claims to be educated unemployed. But at the same time, considering the fact that he was granted to run small scale industry, respondent No.2 will consider it sympathetically and will pass appropriate order. If such application is made on or before April 1, 2000, the authorities will decide the same as expeditiously as possible preferably within three months thereafter. Till the application is decided, the authorities will not dispossess the petitioner till then. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs. I may, however, state that since I am disposing of the petition in light of the observations made hereinabove, I may not be understood to have stated anything on merits of the matter.

--

parekh